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E.O. 11652: N/A

TAGS: EGEN, UNCTAD
SUBJ: CHARTER OF ECONOMIC RIGHTS AND DUTIES: LATEST
G-77 DRAFT

REFS: (A) USUN 4847 (B) USUN 5035 (C) STATE 241095

1. AT CONSULTATIONS IN GENEVA AMONG GROUP B NOV 18, MISSION SHOULD PRESENT FOLLOWING USG POSITION ON LATEST DRAFT OF GROUP OF 77 OF CERDS. THAT DRAFT, CONTAINED IN REFTEL (B), HAS BEEN EARLIER REPEATED TO ADDRESSEE POSTS IN REFTEL (A). ONLY DIFFERENCE APPARENTLY IS THAT TEXT OF REFTEL (B), IN CHAPTER II ARTICLE 3, CHOOSES FIRST ALTERNATIVE GIVEN.

2. G-77 HAS RETAINED, ALMOST ENTIRELY INTACT, THOSE ARTS OF CHARTER ON WHICH AD REFERENDUM AGREEMENT EARLIER HAD BEEN REACHED IN FOUR SESSIONS OF UNCTAD WORKING GROUP AND SUBSEQUENT INFORMAL GENEVA AND NY NEGOTIATIONS. THIS IS GRATIFYING. ONLY POINT OF SLIPPAGE APPEARS TO HAVE BEEN REFERENCE IN ART 30 ON THE ENVIRONMENT, WHERE G-77 HAS DELETED GENEVA-AGREED PHRASE "IN ACCORDANCE WITH PERTINENT INTERNATIONAL NORMS, REGULATIONS AND OBLIGATIONS," THEREBY RENDERING THE ART UNACCEPTABLE TO USG.

3. HOWEVER, G-77 HAS RESOLVED ALMOST ALL DISPUTED POINTS IN ITS FAVOR, MOST IN EXTREME TERMS, OTHERS MORE MODERATELY. RESULT IS A DRAFT CHARTER WHICH, IF PRESSED TO A VOTE, USG WILL VOTE AGAINST AS A WHOLE.

4. THE MOST BUT NOT ONLY OBJECTIONABLE PARA IS ART 2, MAINLY ON THESE GROUNDS: (A) SUBPARA 1 SPEAKS OF PERMANENT SOVEREIGNTY OF A STATE OVER ALL ITS "WEALTH", WHICH MAKES NO SENSE. (B) PROVISION OF SUBPARA 2(A) ON PRIVILEGED TREATMENT WOULD ENACT A KIND OF CALVO CLAUSE WHICH WOULD BE USED TO CONTEST RIGHT OF A STATE TO MAKE DIPLOMATIC REPRESENTATIONS ON BEHALF OF ITS INVESTORS. (C) SUBPARA 2(B) WOULD ASSERT RIGHT OF A STATE TO REGULATE MNCS BUT SAY NOTHING OF REGULATIONS COMPORTING WITH A STATE'S INTERNATIONAL OBLIGATIONS. (D) PROVISION FOR COMPENSATION OF EXPROPRIATED PROPERTY LIMITED OFFICIAL USE

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("APPROPRIATE COMPENSATION SHOULD BE PAID...PROVIDED THAT ALL RELEVANT CIRCUMSTANCES CALL FOR IT"), RESULTANT DISPUTES TO BE SETTLED UNDER DOMESTIC LAW, IS DERISORY. BY IT, CLEARLY A STATE IS FREE TO PAY NO COMPENSATION IF IT SO CHOOSES. THIS PROVISION IN PARTICULAR RENDERS ART 2 UNACCEPTABLE. ONLY POSITIVE ELEMENT OF THIS ART OF G-77 DRAFT IS OMISSION OF A PROVISION ON EXERCISE OF ECONOMIC COERCION, WHICH IS OFFSET BY THE OMISSION

OF A GOVERNING PROVISION TO THE EFFECT THAT THE RIGHTS IN QUESTION SHOULD BE EXERCISED IN ACCORDANCE WITH INTERNATIONAL OBLIGATIONS.

5. ART 5, ON PRODUCERS' CARTELS, REMAINS OBJECTIONABLE, NOT LEAST BECAUSE IT GIVES RIGHTS ONLY TO PRODUCERS AND ENJOINS CONSUMERS FROM TAKING COUNTER-MEASURES.

6. ART 16 ON RESTITUTION FOR RAVAGES OF COLONIALISM IS STUDDED WITH UNACCEPTABLE DOCTRINE AND DEMANDS, E.G., ALLEGED COLLECTIVE DUTY TO ELIMINATE "NEO-COLONIALISM," WHATEVER THAT IS, AND TO MAKE RESTITUTION AND PAY FULL COMPENSATION FOR INCALCULABLE AND NOT NECESSARILY UNJUSTIFIED DAMAGES.

7. ART 28, ON INDEXATION, WHILE AMELIORATED, IS NO MORE THAN BASIS FOR FURTHER NEGOTIATION.

8. ART 4, ON TRADE DISCRIMINATION, APPEARS TO EDGE BRILLANTES FORMULA IN SOVIET DIRECTION. WE WOULD APPRECIATE EC VIEWS ON WHETHER RESULT IS ACCEPTABLE TO IT. ART 26 REMAINS OBJECTIONABLE BECAUSE EXCHANGE OF MFN IS REQUIREMENT RATHER THAN GENERAL RULE.

9. FURTHER DIFFICULTY IS PRESENTED BY PREAMBULAR PROVISIONS "DECLARING THAT IT IS A FUNDAMENTAL PURPOSE OF THIS CHARTER TO CODIFY AND DEVELOP RULES FOR THE ESTABLISHMENT OF A NEW INTERNATIONAL ECONOMIC ORDER..." AND STATING THAT GA ADOPTS CERDS "AS A FIRST STEP IN THE CODIFICATION AND PROGRESSIVE DEVELOPMENT OF THIS SUBJ". IN VIEW OF PROVISIONS OF ART 13 OF UN CHARTER, THESE PROVISIONS WOULD TEND TO SUPPORT VIEW THAT CERDS, IF NOT LEGALLY BINDING, IS AN INTERNATIONAL LEGAL LIMITED OFFICIAL USE

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INSTRUMENT WHICH MAY BE A SOURCE OF INT'L LAW.

10. OTHER OBJECTIONABLE POINTS ARE PREAMBULAR TREATMENT OF COLLECTIVE ECONOMIC SECURITY; INCLUSION OF CONTESTED FUNDAMENTAL OF INT'L ECONOMIC RELATIONS PROVIDING FOR REMEDYING OF INJUSTICES BROUGHT ABOUT BY FORCE; MAINTENANCE OF PROVISION ON DISARMAMENT THAT FREED RESOURCES SHALL GO TO LDCE; PROVISION FOR GENERALIZED PREFERENCES IN NON-TRADE AREAS; INCLUSION OF PROVISION ON LOS; AND PROVISION FOR UNGA PERIODIC REVIEW OF CHARTER.

11. WE NOTE THAT, IN ART 6, G-77 HAS MADE AN EFFORT TO PRESENT A PROVISION ON SECURITY OF SUPPLY WHICH MERITS CONSIDERATION. WE WOULD APPRECIATE GROUP B VIEWS.

12. USDEL, AFTER SETTING OUT ABOVE MULTIPLE OBJECTIONS TO G-77 DRAFT, SHOULD STATE THAT IT WILL TAKE PART IN CONSTRUCTIVE MANNER IN IMPENDING NY NEGOTIATIONS IN HOPE OF MODIFYING DRAFT TO MEET THESE OBJECTIONS. HOWEVER, IF, AS SEEMS LIKELY, SUCH AN EFFORT FAILS, USG IS FIRMLY OF VIEW THAT GROUP B COUNTRIES CAN ADEQUATELY PROTECT THEIR LEGITIMATE INTERESTS ONLY BY A NEGATIVE VOTE ON CHARTER AS A WHOLE. ABSTENTION, WHETHER OR NOT COUPLED WITH NEGATIVE VOTES ON CERTAIN PARAS, WILL BE INSUFFICIENT. IN THIS REGARD, USDEL SHOULD DRAW FULLY ON ARGUMENTATION SET OUT IN REFTEL (C), AND STRONGLY URGE OTHER DELS TO JOIN USG IN A NEGATIVE VOTE.

13. IN ITS DISCRETION, USDEL SHOULD URGE CERDS VETERANS TO JOIN THEIR DELS IN NY FOR NEGOTIATION WITH G-77. KISSINGER

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